

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e) (3) of the North Carolina Rules of Appellate Procedure.

NO. COA06-839

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

STATE OF NORTH CAROLINA

v. Forsyth County  
Nos. 05 CRS 50495  
FRANK BERNARD MCLAURIN, JR., 05 CRS 20113  
Defendant.

Appeal by defendant from judgment entered 21 February 2006 by Judge Andy Cromer in Forsyth County Superior Court. Heard in the Court of Appeals 16 April 2007.

*Attorney General Roy Cooper, by Assistant Attorney General John F. Oates, Jr., for the State.*

*Parish & Cooke, by James R. Parish, for defendant-appellant.*

GEER, Judge.

Following the denial of his motion to suppress evidence, defendant Frank Bernard McLaurin, Jr. pled guilty to possession with intent to sell and deliver cocaine and to attaining habitual felon status. Defendant now appeals from the judgment entered upon that guilty plea, arguing: (1) his motion to suppress was improperly denied because a warrantless search violated his constitutional rights, and (2) he was denied the right to effective assistance of counsel when his trial counsel failed to notify the trial court of defendant's intent to appeal the denial of the motion to suppress. Because defendant failed to give notice of his

intent to appeal the denial of the motion to suppress as required under N.C. Gen. Stat. § 15A-979 (2005) and because we do not have jurisdiction to review defendant's ineffective assistance of counsel claim, we must dismiss defendant's appeal.

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On 13 January 2005, the Winston-Salem police department received a phone call reporting that a man was flagging down cars on New Hope Road in an attempt to sell cocaine to the occupants. The caller, who had previously made accurate reports of drug activity in the neighborhood, described the man's clothing and the direction in which he was walking. Police officers arrived on the scene and approached a man, later identified as defendant, who met the caller's description. Believing that defendant was attempting to flee, the officers arrested and searched defendant, finding cocaine and marijuana in his possession.

On 21 February 2005, defendant was indicted for possession with intent to sell and deliver cocaine, possession of marijuana, and loitering. On the same date, defendant was indicted for having attained habitual felon status. Prior to trial, defendant moved to suppress the evidence seized as a result of the officers' search. After the motion was denied, defendant pled guilty to possession with intent to sell or deliver cocaine and to being a habitual felon.

During sentencing, the trial court found as a mitigating factor that defendant had a support system in the community and sentenced defendant within the mitigated range to a term of 90 to

117 months imprisonment. Defendant timely appealed to this Court.

Defendant argues that the trial court erred by denying his motion to suppress. A defendant who enters a guilty plea does not, however, have an automatic right to appeal the denial of a motion to suppress. Instead, he may only appeal if he gave the State or the trial court notice of his intent to appeal the denial of his motion to suppress prior to the entry of the guilty plea. See N.C. Gen. Stat. § 15A-979(b); *State v. Reynolds*, 298 N.C. 380, 397, 259 S.E.2d 843, 853 (1979), *cert. denied*, 446 U.S. 941, 64 L. Ed. 2d 795, 100 S. Ct. 2164 (1980); *State v. McBride*, 120 N.C. App. 623, 625, 463 S.E.2d 403, 404 (1995), *aff'd per curiam*, 344 N.C. 623, 476 S.E.2d 106 (1996). Defendant concedes in his brief that he did not give notice of his intent to appeal the denial of his motion to suppress. Thus, defendant waived his right to appellate review of that denial.

Defendant makes an alternative argument that his failure to give notice of his intent to appeal was due to the ineffective assistance of his trial counsel. By virtue of defendant's guilty plea, his right to appeal is, however, limited: "Except as provided in . . . G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest has been denied, the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court . . . ." N.C. Gen. Stat. § 15A-1444(e) (2005). Defendant's ineffective assistance of counsel claim does not fall within any of the categories of appeal permitted following a guilty

plea. Accordingly, we lack jurisdiction to consider defendant's arguments. See *State v. Pimental*, 153 N.C. App. 69, 77, 568 S.E.2d 867, 872, *disc. review denied*, 356 N.C. 442, 573 S.E.2d 163 (2002). Defendant may, however, assert his claim in a motion for appropriate relief under N.C. Gen. Stat. § 15A-1420 (2005).

Dismissed.

Judges WYNN and ELMORE concur.

Report per Rule 30(e).